



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	18
VAC Chapter Number:	135
Regulation Title:	Real Estate Board Rules and Regulations
Action Title:	Amending
Date:	12/6/02

Please refer to the Administrative Process Act (§ 2.2-4000 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The proposal makes general clarifying changes; imposes less burdensome requirements for reciprocal applicants; clarifies language regarding applicants with criminal convictions; revises language regarding the supervision of branch offices to focus on the actual supervision provided rather than the physical location of the office; adds clarifying language to the escrow provisions; revises the advertising provisions to incorporate internet advertising; and combines Parts V and VI, Standards of Practice and Conduct.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The Real Estate Board reviewed and adopted the final regulations, entitled “Real Estate Board Rules and Regulations” on October 24, 2002.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

Sections 54.1-2100, et seq. of the *Code of Virginia* require the licensure of real estate salespersons and brokers.

Section 54.1-2105 states that the Board “may do all things necessary and convenient for carrying into effect the provisions of this chapter and may promulgate necessary regulations.”

The Office of the Attorney General has reviewed the changes to the proposed regulations and has stated that the Real Estate Board has the statutory authority to promulgate the final regulations.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The proposal:

- makes general clarifying changes throughout the regulations;
- imposes less burdensome requirements for reciprocal applicants by deleting the requirement to pass the Virginia real estate license law and regulations portion of the examination upon licensure and requiring passage of the examination at the time of the first renewal (public protection is maintained because licensees have been practicing in other jurisdictions and

- have provided documentation regarding the status of their licenses, including any disciplinary action taken);
- clarifies language regarding applicants with criminal convictions which will enable individuals with minor convictions to obtain a license without the delay of Board review through the Administrative Process Act;
 - revises language regarding the supervision of branch offices to focus on the actual supervision provided rather than the physical location of the office which increases public protection by specifying in detail the type of supervision required to ensure compliance with applicable laws and regulations;
 - adds clarifying language to the escrow provisions (by adding language regarding the required balance in escrow accounts and the provision prohibiting the payment of commissions to licensees from the escrow account)
 - adds language to the escrow provisions regarding the disbursement of escrow moneys in the event the transaction is not consummated (these provisions permit the individual to get funds due them in a more expedient manner while at the same time containing notice requirements to protect all parties)
 - revises the advertising provisions for simplification purposes, to incorporate internet advertising that will provide increased public protection, and by adding specific disclosure requirements;
 - combines Parts V and VI, Standards of Practice and Conduct.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

Part I, General.

18 VAC 135-20-10. Definitions.

- A definition of “active” has been added for clarifying purposes; the term is used throughout the regulations.
- Language has been added to the definition of “actively engaged” to incorporate the statutory waiver language.
- Language has been added to the definition of “firm” to clarify the existing practice regarding fictitious names.
- The definition of “licensee” has been amended to provide consistency with the use of the term throughout the regulations.
- The definition of “principal to a transaction” has been amended for clarification and consistency with the provisions of the statute regarding agency law (§ 54.1-2130 et seq.).
- The definition of “supervising broker” has been amended for clarifying purposes and to add reference to agency law (§ 54.1-2130 et seq.).

Part II, Entry

18 VAC 135-20-20. Necessity for license.

Subsection B has been amended to:

- change “brokerage firm” to “firm” for consistency with other sections of the regulations.
- delete the requirement for partnerships, associations, corporations and limited liability companies to provide information regarding partners, owners and officers because the information is not currently maintained and not required for enforcement purposes because the principal broker is responsible for compliance with the regulations and other information can be obtained from the State Corporation Commission database.
- change the term “branch office” to “place of business” for consistency with Section 18 VAC 135-20-160.

18 VAC 135-20-30. Qualifications for Licensure.

- Subsection 4 has been amended to eliminate certain criminal convictions (misdemeanor convictions for drunk in public, driving under the influence, traffic violations, and misdemeanor convictions that occurred five or more years prior to the date of application with no subsequent convictions) from those convictions that require Board review prior to the issuance of a license.
- Subsection 7 has been amended to give the Board the discretion to approve an applicant who has not complied with the procedures established with regard to conduct at the examination if such approval is justified by the facts and the issuance of the license will not harm public health, safety and welfare.

18 VAC 135-20-40. Additional qualifications for brokers.

- Subsection 2 has been amended to incorporate the statutory waiver language.

18 VAC 135-20-45. Additional qualifications for salesperson’s or associate broker’s license as a business entity.

- Subsection 1 and 2 have been amended for clarification purposes and consistency with statute (§ 54.1-2106.1).
- Subsections 3 through 6 have been amended to delete the requirement for partnerships, associations, corporations and limited liability companies to provide information regarding partners, owners and officers because the information is not currently maintained and not required for enforcement purposes because the principal broker is responsible for compliance with the regulations and other information can be obtained from the State Corporation Commission database.
- Subsection 5.b. has been amended for clarification purposes and consistency with 18 VAC 135-20-20 B.

18 VAC 135-20-50. Concurrent licenses.

- This section has been amended for clarification purposes and consistency with the Definitions section.

18 VAC 135-20-60. Qualifications for licensure by reciprocity.

- Subsection A has been deleted because is duplicative and unnecessary.

- Subsection B.3 has been amended to delete the requirement for reciprocal applicants to pass the Virginia real estate license law and regulations portion of the examination (18 VAC 135-20-105 has been added to require reciprocal licensees to pass the examination prior to their first renewal).
- Subsection B.4 has been amended to give the Board the discretion to approve an applicant who has not complied with the procedures established with regard to conduct at the examination if such approval is justified by the facts and the issuance of the license will not harm public health, safety and welfare (consistent with changes to 18 VAC 135-20-30 7).
- Subsection B.6 has been amended for clarification (language moved from Subsection D) and to incorporate the statutory waiver language (consistent with changes to 18 VAC 135-20-40 2).
- Subsection B.8 has been amended to eliminate certain criminal convictions (misdemeanor convictions for drunk in public, driving under the influence, traffic violations, and misdemeanor convictions that occurred five or more years prior to the date of application with no subsequent convictions) from those convictions that require Board review prior to the issuance of a license (consistent with changes to 18 VAC 135-20-30 4).

18 VAC 135-20-70. Activation or transfer of license.

Subsection B has been amended for clarification purposes.

- Subsection B was added to incorporate current practice of requiring an application (existing fee provided for in 18 VAC 135-20-80).

18 VAC 135-20-80. Fees

Subsection B has been amended to:

- Clarify the name of the business entity license.
- Delete the bad check penalty, this is an administrative fee charged by the Department of Professional and Occupational Regulation for all programs, it is not required to be regulation.

Part III, Renewal of License

18 VAC 135-20-100

- Subsections 2 and 3 have been amended to delete reference to requirements in place prior to January 1, 1999, they are no longer applicable; and to add “common interest ownership” as an acceptable topic for continuing education.
- Subsection B was deleted because 18 VAC 135-20-130 permits the board to deny renewal of a license for the same reasons it may refuse initial licensure.

18 VAC 135-20-105. Additional qualifications for renewal of a reciprocal license.

- This section was added to require reciprocal licensees to pass an examination on Virginia real estate license law and regulations prior to the first renewal (this requirement was deleted from the requirements for initial licensure in 18 VAC 135-20-60).

18 VAC 135-20-110. Procedures for Renewal

- Subsection A was deleted because most of the subsection outlines Board procedures and is not required to be in regulation; the last sentence regarding failure to receive renewal notices was moved to Subsection B.

18 VAC 135-20-130. Board discretion to deny renewal.

- Language was added to this section from 18 VAC 135-20-100 C.

Part IV, Reinstatement

18 VAC 135-20-150. Board discretion to deny reinstatement.

- This section was amended to combine Subsections A and B and for consistency with 18 VAC 135-20-130 regarding renewal.

Part V, Standards of Practice and Conduct

Part V, Standards of Practice and Part VI, Standards of Conduct have been combined.

18 VAC 135-20-160. Place of business.

- Subsection D was amended to relate supervision of branch offices to the licensees assigned to the branch rather than the physical location of the branch and to delete language regarding display of signs which was moved in part to 18 VAC 135-20-190 E 3.

18 VAC 135-20-170. Maintenance of licenses

- Subsection B was amended for clarification purposes and to distinguish between the principal broker and other licensees.
- Subsection E was deleted, portions of the language were moved to 18 VAC 135-20-70, the remaining language either outlines Board procedures or is duplicative and is not necessary.

18 VAC 135-20-180. Maintenance and management of escrow accounts.

- Subsection A 1 has been amended to clarify the existing requirement for the balance in escrow accounts to be sufficient at all times to account for all funds that are designated to be held by the firm or sole proprietorship.
- Subsection B.1.a. was amended to provide a less burdensome way for the licensee to release escrow money when a contract is not consummated and adds additional notice requirements to protect the public.
- Subsection C 4 was added for consistency with 18 VAC 135-20-180 A 1.
- Subsection C 5 was added to further protect the public by increased reporting requirements for escrow violations.

18 VAC 135-20-185. Maintenance and management of financial records.

- Subsection A was amended to permit firms to keep their original records at an office outside of Virginia as long as a copy is maintained in Virginia. Many firms have their main office outside Virginia and a branch office in Virginia.
- Subsection C was added by moving language from 18 VAC 135-20-320 1 through 3 and the last portion of C.1 was amended to add “unless prohibited by law” because the settlement statement is not always provided since the enactment of the Gramm-Leach-Bliley Act of 1999 regarding privacy issues.

18 VAC 135-20-190. Advertising by licensees.

- The relevant portions of the first paragraph were moved to Subsection E, other portions were deleted for consistency with other amendments that distinguish only between on-line advertising and other advertising without reference to signs, newspapers, publications, etc.
- Subsection A, definition of “advertising” was amended to simplify existing language.
- Subsection A, definition of “disclosure” was added to provisions for on-line advertising and to further protect the public by providing additional disclosure requirements.
- Subsection A, definition of “institutional advertising” amended to delete reference to licensees and service marks to further distinguish institutional advertising from other advertising.
- Subsection A, definition of “viewable page” was added in relation to on-line advertising.
- Subsection B was amended to achieve consistency with the definitions section and other advertising changes.
- Subsection D, existing language was deleted consistent with other advertising changes regarding service marks and institutional advertising and new language was added to provide for on-line advertising.
- Subsection E, paragraphs 1 through 3 were moved from the first paragraph of the section; paragraph 4 was moved from 18 VAC 135-20-290 Subsections 2 and 3; and paragraph 5 was added to reflect the current business practices of many multiple listing services.

18 VAC 135-20-220. Disclosure of brokerage relationships.

- Subsection A 5 was deleted, it is no longer necessary because other disclosure provisions meet the requirements of §§ 54.1-2130 et seq. of the *Code of Virginia*.

18 VAC 135-20-230. Licensees dealing on own account

- This provision was deleted and existing language was moved to 18 VAC 135-20-155.

18 VAC 135 20-240. Provision of records to the board.

18 VAC 135-20-250. Response to inquiry of the board.

- These sections were amended to distinguish between the types of inquiries and requests.

18 VAC 135-20-260. Unworthiness and incompetence.

- Subsection 5 was amended for consistency with changes made to entry requirements in 18 VAC 135-20-30 4 and 18 VAC 135-20-60 7.
- Subsection 6 was amended for consistency with Subsection 5.
- Subsections 7 and 8 were added to permit the board to discipline a licensee who has been the subject of disciplinary action in another jurisdiction. These provisions are currently contained in the entry requirements in 18 VAC 135-20-30 3 and 8 and 18 VAC 135-20-60 5 and 9.

18 VAC 135-20-280. Improper brokerage commission

- Subsection 2 was amended to incorporate changes in the industry regarding the provision of additional services by licensees relating to other aspects of the transaction or property (i.e. mortgage services, property repair and maintenance services).

18 VAC 135-20-290. Improper dealing.

- Subsection 1 was amended to provide more options to the client regarding termination of the relationship, public protection is maintained by continuing a requirement for termination language.

18 VAC 135-20-300. Misrepresentation/omission

- Subsection 9 was amended for consistency with Virginia case law .

18 VAC 135-20-330. Principal and supervising broker's responsibility for acts of licensees and employees.

- Language was added to protect the broker from disciplinary action if he takes reasonable action to remedy a situation involving unlawful acts and violations by subordinate licensees, this ties in with the language regarding reporting requirements contained in 18 VAC 135-20-180 C 5 which provide additional public protection.

Part VI. Schools.

18 VAC 135-20-370. Fees.

- Subsection G was amended to clarify that the Board can deny renewal for the same reasons it may deny initial approval and to delete language regarding a hearing to permit an Informal Fact Finding Conference in accordance with the Administrative Process Act in lieu of proceeding to a Formal Hearing.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The advantages to the public and the Commonwealth resulting from the proposed regulation are to further protect consumers by:

- Imposing less burdensome requirements for reciprocal applicants which will decrease unlicensed activity thereby increasing public protection by bringing more individuals under the jurisdiction of the Board and the Real Estate Transaction Recovery Act (§§ 54.1-2112 et seq., *Code of Virginia*).
- Adding requirements regarding supervision of licensees working out of branch offices.
- Adding clarification to the requirements regarding funds belonging to the public which are held in escrow.
- Requiring increased disclosure in the advertising provisions to ensure the public is not harmed by on-line advertising.

No disadvantages have been identified.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

18 VAC 135-20-20 B. Add “brokerage” to read “firm’s brokerage business”. This change is made in response to public comment and tracks the language in Section 54.1-2106.1 of the *Code of Virginia*.

18 VAC 135-20-30 4. Change “crime” to “felony or misdemeanor” for clarification purposes.

18 VAC 135-20-50. Change “affidavits stating” to “statements verifying”. This change is necessary to move to electronic submission of application documents.

18 VAC 135-20-60. Change “an affidavit stating” to “a statement verifying”. This change is necessary to move to electronic submission of application documents.

18 VAC 135-20-60 8. Change “crime” to “felony or misdemeanor” for clarification purposes.

18 VAC 135-20-190. Change the definitions of “advertising” and “service mark”. This change is necessary to correct an error in the published version. The language should read:

“Advertising” means all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication to consumers for any purpose related to licensed real estate activity.

“Service mark” means the trade name, or logo, whether or not registered under any federal or state law, which is owned by an entity other than the firm and which the firm has obtained permission to use through agreement, license, franchise, or otherwise.

18 VAC 135-20-260 5. Change “crime” to “felony or misdemeanor” for clarification purposes.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Commenter	Summary of Comment	Proposed Response
Linda Woolridge LINDA.WOOLRIDGE @LongandFoster.com	Convicted felons should not be permitted to obtain a license.	The proposed regulations do not change the status of applicants with felony convictions. The provisions

<p>Dee Spraker dee@deespraker.com</p> <p>Cindy Stackhouse C21CindyS@aol.com</p> <p>Nick Felicione NICK.FELICIONE @LongandFoster.com</p> <p>Lois and Chuck Moyer Loismoyer@aol.com</p> <p>Cheryl Kenny CherylKennyCRS@aol.com</p> <p>Tony Giglio tgiglio@coldwellbankermove.com</p> <p>John Tom JTom5216@aol.com</p> <p>Gene Shuman ShumanES@aol.com</p>		<p>are rewritten to better track the statutory mandate contained in Section 54.1-204 of the <i>Code of Virginia</i> and eliminate the requirement for individuals with the listed misdemeanor convictions to be reviewed by the Board through the procedures set forth in the Administrative Process Act. However, for purposes of clarification, “crime” will be changed to “felony or misdemeanor” in Sections 30 4; 60 8; and 260 5.</p>
<p>James J. Flynn 14499 Pratt Street Woodbridge, VA 22191</p>	<p>See first comment regarding felony convictions.</p>	<p>See first proposed response regarding felony convictions.</p>
	<p>Section 180 B – The requirement for any security deposit to be placed in an escrow account within five days seems unnecessarily burdensome.</p>	<p>The five-day requirement is a current requirement, not a proposed change. The regulations permit a written agreement to be used if it is impracticable to meet the five-day requirement. No change is required.</p>

	Section 280 – The use of information regarding a real estate transaction by agents involved in the transaction should be severely limited. The sentence should be amended to require permission for use of information from the principal involved.	The information referenced is not confidential, therefore, consent of the principal involved is not required. No change is required.
Mark S. Ingrao Apartment and Office Building Association of Metropolitan Washington 1050 17 th Street, NW Washington, DC 20036	Section 20 B – New language requires all persons working as sole proprietor (non-broker owner), partnership, association, limited liability company or corporation to be broker licensed even if they are not directly involved in the brokerage business of that entity.	Add “brokerage” to read “firm’s brokerage business”. This tracks the language in Section 54.1-2106.1 of the <i>Code of Virginia</i> .
Bob Jurgensen Weichert Realtors 7900 Sudley Road Manassas, VA 20112 Toppro@aol.com	See first comment regarding felony convictions	See first proposed response regarding felony convictions.
	Increase the education requirements for salespersons, this would help to minimize the part time agents and in turn would help to reduce complaints made against agents who make mistakes or are incompetent.	The education requirements are set forth in Section 54.1-2105 of the <i>Code of Virginia</i> . There is no evidence that the public is not being protected by the current requirements or that increased requirements would enhance public protection. No change is required.

	Institute a mandatory mentoring or apprentice period of one-two years requiring new agents to work under the direct supervision of an associate broker or salesperson with not less than 5 years experience.	There is no evidence that the public is not being protected by the current requirements or that increased requirements would enhance public protection. No change is required.
	Consider mandatory “single licensure” as an associate broker, within 3 years from the date enacted, requiring all salespersons to meet the minimum standards of an associate broker.	There is no evidence that the public is not being protected by the current requirements or that increased requirements would enhance public protection. No change is required.
	Raise the requirement for education to a high school diploma or associate degree.	The education requirements are set forth in Section 54.1-2105 of the <i>Code of Virginia</i> . There is no evidence that the public is not being protected by the current requirements or that increased requirements would enhance public protection. No change is required.
	Raise minimal requirements.	There is no evidence that the public is not being protected by the current requirements or that increased requirements would enhance public protection. No change is required.
	Raise licensure fees, double them to help weed out and discourage part time agents.	Licensure fees are set by the Board in accordance with Section 54.1-113 of the <i>Code of Virginia</i> (Callahan Act) which requires that the Board maintain revenues and expenses within 10%. Enforcement data does not support a higher rate of regulatory violations by part-time agents. No change is

		required.
Ann Palmateer Virginia Association of Realtors 10231 Telegraph Road Glen Allen, VA 23059-4578	Agree with most comments but have a concern about changes in criminal conviction provisions.	See first proposed response regarding felony convictions.
Trudy Goodwin Chairman of the Board Dulles Area Association of Realtors 803 Sycolin Road, Suite 222 Leesburg, VA 20175	Agree with most comments but have a concern about changes in criminal conviction provisions.	See first proposed response regarding felony convictions.
Conchita Mitchell Executive Director Northern Virginia Apartment Association 1075 South Jefferson Street, Box A Arlington, VA 22204	Section 20 B could be interpreted as being applicable to persons or entities not required to have real estate licenses under Section 54.1-2103 of the <i>Code of Virginia</i> .	Add “brokerage” to read “firm’s brokerage business”. This tracks the language in Section 54.1-2106.1 of the <i>Code of Virginia</i> .

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

Part I, General.

18 VAC 135-20-10. Definitions.

- A definition of “active” has been added for clarifying purposes; the term is used throughout the regulations.
- Language has been added to the definition of “actively engaged” to incorporate the statutory waiver language.
- Language has been added to the definition of “firm” to clarify the existing practice regarding fictitious names.
- The definition of “licensee” has been amended to provide consistency with the use of the term throughout the regulations.
- The definition of “principal to a transaction” has been amended for clarification and consistency with the provisions of the statute regarding agency law (§ 54.1-2130 et seq.).
- The definition of “supervising broker” has been amended for clarifying purposes and to add reference to agency law (§ 54.1-2130 et seq.).

Part II, Entry

18 VAC 135-20-20. Necessity for license.

Subsection B has been amended to:

- Change “brokerage firm” to “firm” for consistency with other sections of the regulations.
- Move language regarding address changes and the authorization for the entity to do business in Virginia from Subsections B 1-5 to Subsection B.
- Delete the requirement for partnerships, associations, corporations and limited liability companies to provide information regarding partners, owners and officers because the information is not currently maintained and not required for enforcement purposes because the principal broker is responsible for compliance with the regulations and other information can be obtained from the State Corporation Commission database.
- To change the term “branch office” to “place of business” for consistency with Section 18 VAC 135-20-160.

18 VAC 135-20-30. Qualifications for Licensure.

- Subsection 4 has been amended to eliminate certain criminal convictions (misdemeanor convictions for drunk in public, driving under the influence, traffic violations, and misdemeanor convictions that occurred five or more years prior to the date of application with no subsequent convictions) from those convictions that require Board review prior to the issuance of a license.
- Subsection 6 has been amended for clarification purposes.
- Subsection 7 has been amended to give the Board the discretion to approve an applicant who has not complied with the procedures established with regard to conduct at the examination if such approval is justified by the facts and the issuance of the license will not harm public health, safety and welfare.

18 VAC 135-20-40. Additional qualifications for brokers.

- Subsection 2 has been amended to incorporate the statutory waiver language.

18 VAC 135-20-45. Additional qualifications for salesperson’s or associate broker’s license as a business entity.

- Subsection 1 and 2 have been amended for clarification purposes and consistency with statute (§ 54.1-2106.1).
- Subsections 3 through 6 have been amended to delete the requirement for partnerships, associations, corporations and limited liability companies to provide information regarding partners, owners and officers because the information is not currently maintained and not required for enforcement purposes because the principal broker is responsible for compliance with the regulations and other information can be obtained from the State Corporation Commission database.
- Subsection 5.b. has been amended for clarification purposes and consistency with 18 VAC 135-20-20 B.

18 VAC 135-20-50. Concurrent licenses.

- This section has been amended for clarification purposes and consistency with the Definitions section.

18 VAC 135-20-60. Qualifications for licensure by reciprocity.

- Subsection A has been deleted because is duplicative and unnecessary.
- Subsection B.3 has been amended to delete the requirement for reciprocal applicants to pass the Virginia real estate license law and regulations portion of the examination (18 VAC 135-20-105 has been added to require reciprocal licensees to pass the examination prior to their first renewal).
- Subsection B.4 has been amended to give the Board the discretion to approve an applicant who has not complied with the procedures established with regard to conduct at the examination if such approval is justified by the facts and the issuance of the license will not harm public health, safety and welfare (consistent with changes to 18 VAC 135-20-30 7).
- Subsection B.6 has been amended for clarification (language moved from Subsection D) and to incorporate the statutory waiver language (consistent with changes to 18 VAC 135-20-40 2).
- Subsection B.8 has been amended to eliminate certain criminal convictions (misdemeanor convictions for drunk in public, driving under the influence, traffic violations, and misdemeanor convictions that occurred five or more years prior to the date of application with no subsequent convictions) from those convictions that require Board review prior to the issuance of a license (consistent with changes to 18 VAC 135-20-30 4).
- Subsections C and D were deleted because the language has been incorporated in Subsection B.6.

18 VAC 135-20-70. Activation or transfer of license.

Subsection B has been amended for clarification purposes.

- Subsection B was added to incorporate current practice of requiring an application (existing fee provided for in 18 VAC 135-20-80).

18 VAC 135-20-80. Fees

Subsection B has been amended to:

- Clarify the name of the business entity license.
- Delete the bad check penalty, this is an administrative fee charged by the Department of Professional and Occupational Regulation for all programs, it is not required to be regulation.

Part III, Renewal of License

18 VAC 135-20-100

- Subsections 2 and 3 have been amended to delete reference to requirements in place prior to January 1, 1999, they are no longer applicable; and to add “common interest ownership” as an acceptable topic for continuing education.
- Subsection B was deleted because 18 VAC 135-20-130 permits the board to deny renewal of a license for the same reasons it may refuse initial licensure.
- Subsection C was deleted from this Section and moved to 18 VAC 135-20-130.

18 VAC 135-20-105. Additional qualifications for renewal of a reciprocal license.

- This section was added to require reciprocal licensees to pass an examination on Virginia real estate license law and regulations prior to the first renewal (this requirement was deleted from the requirements for initial licensure in 18 VAC 135-20-60).

18 VAC 135-20-110. Procedures for Renewal

- Subsection A was deleted because most of the subsection outlines Board procedures and is not required to be in regulation; the last sentence regarding failure to receive renewal notices was moved to Subsection B.
- Subsection B, language regarding failure to receive renewal notices was moved from Subsection A.

18 VAC 135-20-130. Board discretion to deny renewal.

- Language was added to this section from 18 VAC 135-20-100 C.

Part IV, Reinstatement

18 VAC 135-20-150. Board discretion to deny reinstatement.

- This section was amended to combine Subsections A and B and for consistency with 18 VAC 135-20-130 regarding renewal.

Part V, Standards of Practice and Conduct

Part V, Standards of Practice and Part VI, Standards of Conduct have been combined.

18 VAC 135-20-155. Grounds for disciplinary action.

- All provisions were moved to this section from Sections 18 VAC 135-20-200 and 18 VAC 135-20-230.

18 VAC 135-20-160. Place of business.

- Subsection C, this language was moved from Subsection E.
- Subsection D was amended to relate supervision of branch offices to the licensees assigned to the branch rather than the physical location of the branch and to delete language regarding display of signs which was moved in part to 18 VAC 135-20-190 E 3.
- Subsection E was deleted, language was moved to Subsection C.
- Subsection F was deleted, language was moved to 18 VAC 135-20-170 A 3.

18 VAC 135-20-170. Maintenance of licenses

- Subsections A 1 and 2 were amended for clarification purposes.
- Subsection A 3 was amended to add language deleted from 18 VAC 135-20-20 B 1-5 and 18 VAC 135-20-160 F.
- Subsection B was amended for clarification purposes and to distinguish between the principal broker and other licensees.
- Subsection E was deleted, portions of the language were moved to 18 VAC 135-20-70, the remaining language either outlines Board procedures or is duplicative and is not necessary.

18 VAC 135-20-180. Maintenance and management of escrow accounts.

- Provisions relating to maintenance of financial records have been deleted from this section and moved to a new section 18 VAC 135-20-185, Maintenance and management of financial records.
- Subsection A 1 has been amended to clarify the existing requirement for the balance in escrow accounts to be sufficient at all times to account for all funds that are designated to be held by the firm or sole proprietorship.
- Subsection A 2 was amended for clarification purposes.
- Subsection B.1.a. was amended to provide a less burdensome way for the licensee to release escrow money when a contract is not consummated and adds additional notice requirements to protect the public.
- Subsections B1.b. and c were amended for clarification purposes.
- Subsection C 1-3 was added by moving language from 18 VAC 135-320 4 through 6.
- Subsection C 4 was added for consistency with 18 VAC 135-20-180 A 1.
- Subsection C 5 was added to further protect the public by increased reporting requirements for escrow violations.

18 VAC 135-20-185. Maintenance and management of financial records.

- This section was added to incorporate provisions from 18 VAC 135-20-180 regarding financial records.
- Subsection A was amended to permit firms to keep their original records at an office outside of Virginia as long as a copy is maintained in Virginia. Many firms have their main office outside Virginia and a branch office in Virginia.
- Subsection B was amended for clarification purposes.
- Subsection C was added by moving language from 18 VAC 135-20-320 1 through 3 and the last portion of C.1 was amended to add “unless prohibited by law” because the settlement statement is not always provided since the enactment of the Gramm-Leach-Bliley Act of 1999 regarding privacy issues.

18 VAC 135-20-190. Advertising by licensees.

- The relevant portions of the first paragraph were moved to Subsection E, other portions were deleted for consistency with other amendments that distinguish only between on-line advertising and other advertising without reference to signs, newspapers, publications, etc.
- Subsection A, definition of “advertising” was amended to simplify existing language.
- Subsection A, definition of “disclosure” was added to provisions for on-line advertising and to further protect the public by providing additional disclosure requirements.
- Subsection A, definition of “institutional advertising” amended to delete reference to licensees and service marks to further distinguish institutional advertising from other advertising.
- Subsection A, definition of “viewable page” was added in relation to on-line advertising.
- Subsection B was amended to achieve consistency with the definitions section and other advertising changes.
- Subsection C was deleted and moved to Subsection E.
- Subsection D, existing language was deleted consistent with other advertising changes regarding service marks and institutional advertising and new language was added to provide for on-line advertising.

- Subsection E, paragraphs 1 through 3 were moved from the first paragraph of the section; paragraph 4 was moved from 18 VAC 135-20-290 Subsections 2 and 3; and paragraph 5 was added to reflect the current business practices of many multiple listing services.

18 VAC 135-20-200. Grounds for disciplinary action.

- This section was deleted and existing language was moved to 18 VAC 135-20-155.

18 VAC 135-20-220. Disclosure of brokerage relationships.

- Subsections A 3 and 4 were amended for clarification purposes.
- Subsection A 5 was deleted, it is no longer necessary because other disclosure provisions meet the requirements of §§ 54.1-2130 et seq. of the *Code of Virginia*.

18 VAC 135-20-230. Licensees dealing on own account

- This provision was deleted and existing language was moved to 18 VAC 135-20-155.

18 VAC 135 20-240. Provision of records to the board.

18 VAC 135-20-250. Response to inquiry of the board.

- These sections were amended to distinguish between the types of inquiries and requests.

18 VAC 135-20-260. Unworthiness and incompetence.

- Subsection 5 was amended for consistency with changes made to entry requirements in 18 VAC 135-20-30 4 and 18 VAC 135-20-60 7.
- Subsection 6 was amended for consistency with Subsection 5.
- Subsections 7 and 8 were added to permit the board to discipline a licensee who has been the subject of disciplinary action in another jurisdiction. These provisions are currently contained in the entry requirements in 18 VAC 135-20-30 3 and 8 and 18 VAC 135-20-60 5 and 9.

18 VAC 135-20-270. Conflict of Interests

- Subsections 1 and 2 were amended for clarification purposes

18 VAC 135-20-280. Improper brokerage commission

- Subsection 2 was amended to incorporate changes in the industry regarding the provision of additional services by licensees relating to other aspects of the transaction or property (i.e. mortgage services, property repair and maintenance services).

18 VAC 135-20-290. Improper dealing.

- Subsection 1 was amended to provide more options to the client regarding termination of the relationship, public protection is maintained by continuing a requirement for termination language.

18 VAC 135-20-300. Misrepresentation/omission

- Subsection 9 was amended for consistency with Virginia case law .

18 VAC 135-20-320. Record keeping and escrow funds

- All provisions were deleted and moved to 18 VAC 135-20-180 C 1 through 3 and 18 VAC 135-20-185 C 1 through 3.

18 VAC 135-20-330. Principal and supervising broker's responsibility for acts of licensees and employees.

- Language was added to protect the broker from disciplinary action if he takes reasonable action to remedy a situation involving unlawful acts and violations by subordinate licensees, this ties in with the language regarding reporting requirements contained in 18 VAC 135-20-180 C 5 which provide additional public protection.

Part VI. Schools.

18 VAC 135-20-360. Proprietary school standards, instructor qualifications and course requirements.

- Subsection B 3 was amended for clarification purposes.

18 VAC 135-20-370. Fees.

- Subsection G was amended to clarify that the Board can deny renewal for the same reasons it may deny initial approval and to delete language regarding a hearing to permit an Informal Fact Finding Conference in accordance with the Administrative Process Act in lieu of proceeding to a Formal Hearing.

18 VAC 135-20-410. Broker Courses.

- Subsection C was amended for clarification purposes.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is anticipated that the proposed regulatory changes will have no impact on families.